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## **DEPARTMENT OF COMMERCE**

### **Bureau of Industry and Security**

#### **15 CFR Parts 742 and 774**

**[Docket No. 110928603-1605-02]**

**RIN 0694-AF39**

**Revisions to the Export Administration Regulations (EAR): Control of Submersible Vessels, Oceanographic Equipment and Related Articles that the President Determines No Longer Warrant Control under the United States Munitions List (USML).**

**AGENCY:** Bureau of Industry and Security, Department of Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) publishes this proposed rule that describes how submersible vessels, oceanographic equipment and related articles that the President determines no longer warrant control under Category VI (Vessels of War and Special

Naval Equipment) or Category XX (Submersible Vessels, Oceanographic and Associated Equipment) of the United States Munitions List (USML) would be controlled under the Commerce Control List (CCL) in new Export Control Classification Numbers (ECCNs) 8A620, 8B620, 8D620, and 8E620. In addition, this proposed rule would control closed and semi-closed circuit (rebreathing) apparatus, engines and propulsion systems for submersible vessels, and submarine and torpedo nets, which are currently controlled under ECCN 8A018, under new ECCN 8A620. With this proposed rule, BIS also would establish a new, unilateral control on submersibles “specially designed” for cargo transport that are not currently subject to USML or CCL controls.

This rule is one of a planned series of proposed rules that are part of the Administration’s Export Control Reform Initiative under which various types of articles presently controlled on the USML under the International Traffic in Arms Regulations (ITAR) would, instead, be controlled on the CCL in accordance with the requirements of the Export Administration Regulations (EAR), if and after the President determines that such articles no longer warrant control on the USML.

BIS is publishing this proposed rule, on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], in conjunction with another proposed rule that describes how surface vessels of war and special naval equipment the President determines no longer warrant control under Category VI would be controlled on the CCL under new ECCNs 8A609, 8B609, 8C609, 8D609, and 8E609. This proposed rule also is being published in conjunction with two proposed rules of the Department of State, Directorate of Defense Trade Controls, that would amend the

list of articles controlled by USML Categories VI and Category XX, respectively. In recognition of the significant difference between surface vessels of war and submarines, the U.S. Department of State, Directorate of Defense Trade Controls, is proposing to move submarines and associated equipment from Category VI on the USML to Category XX.

**DATES:** Comments must be received by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. The identification number for this rulemaking is BIS-2011-0045.
- By e-mail directly to [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov). Include RIN 0694-AF39 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Refer to RIN 0694-AF39.

**FOR FURTHER INFORMATION CONTACT:** Alexander Lopes, Director, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482-4875, E-mail: [Alexander.Lopes@bis.doc.gov](mailto:Alexander.Lopes@bis.doc.gov).

**SUPPLEMENTARY INFORMATION:**

## **Background**

On July 15, 2011, as part of the Administration's ongoing Export Control Reform Initiative, the Bureau of Industry and Security (BIS) published a proposed rule (76 FR 41958) ("the July 15 proposed rule") that set forth a framework for how articles the President determines, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. § 2778(f)), would no longer warrant control on the United States Munitions List (USML) and, instead, would be controlled on the Commerce Control List (CCL). The July 15 proposed rule also contained a proposal by BIS describing how military vehicles and related articles in USML Category VII that no longer warrant control under the USML would be controlled on the CCL – the military vehicles proposal was the first in a series of such proposed rules to be published by BIS. With this proposed rule, BIS also would establish a new, unilateral control on submersibles "specially designed" for cargo transport that are not currently subject to USML or CCL controls.

On November 7, 2011 (76 FR 68675), and December 6, 2011 (76 FR 76072), BIS published proposed rules describing how aircraft and related items, and gas turbine engines and related items, respectively, determined by the President to no longer warrant control under the USML would be controlled on the CCL. In the November 7 proposed rule, BIS also made several changes and additions to the framework proposed in the July 15 proposed rule.

BIS plans to publish additional proposed rules describing how certain articles that the President determines no longer warrant control on the USML would be controlled on the CCL.

BIS also plans to publish a proposed rule describing how the new controls described in this and similar notices would be implemented, such as through the use of “grandfather” clauses and additional exceptions. The goal of such provisions would be to give exporters sufficient time to implement each final rule and to avoid, to the extent possible, situations where transactions would require licenses from both the State Department and the Commerce Department.

Following the structure of the July 15 and November 7 proposed rules, which describe the “export control reform initiative framework” for transferring certain USML items to the CCL, this proposed rule describes BIS’s proposal for how another group of items – submersible vessels, oceanographic equipment and related articles that are controlled by USML Category VI or Category XX – would be controlled on the CCL. The changes described in this proposed rule and related amendments proposed by the State Department to Categories VI and XX of the USML are based on a review of these USML Categories by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review was focused on identifying the types of articles that are now controlled by USML Category VI or Category XX that are either: (i) inherently military and otherwise warrant control on the USML or (ii) if they are a type common to civil applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States, and are almost exclusively available from the United States. If an article satisfies either or both of those criteria, the article would remain on the USML. If an article does not satisfy either

criterion, but is nonetheless a type of article that is, as a result of differences in form and fit, “specially designed” for military applications, then it is identified in one of the new ECCNs in this proposed rule. Finally, if an article does not satisfy either of the two criteria and is not found to be “specially designed” for military applications, the article is not affected by this rule because such items already are not on the USML. The licensing policies and other EAR-specific controls for such items that are also described in this proposed rule would enhance our national security by: (i) allowing for greater interoperability with our NATO and other allies while maintaining and expanding robust controls that, in some instances, would include prohibitions on exports or reexports destined for other countries or intended for proscribed end-users and end-uses; (ii) enhancing our defense industrial base by, for example, reducing the current incentives for foreign companies to design out or avoid U.S.-origin ITAR-controlled content, particularly with respect to generic, unspecified parts and components; and (iii) permitting the U.S. Government to focus its resources on controlling, monitoring, investigating, analyzing, and, if need be, prohibiting exports and reexports of more significant items to destinations, end users, and end uses of greater concern than our NATO allies and other multi-regime partners.

Pursuant to section 38(f) of the AECA, the President shall review the USML “to determine what items, if any, no longer warrant export controls under” the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must “describe the nature of any controls to be imposed on that item under any other provision of law.” 22 U.S.C. § 2778(f)(1).

This proposed rule describes how certain submersible vessels, oceanographic equipment and related articles currently in USML Category VI or Category XX would be controlled by the EAR and identified on the CCL, if the President determines that the articles no longer warrant control on the USML. The Department of Commerce is publishing in conjunction with this proposed rule, on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], a proposed rule describing how surface vessels of war “specially designed” for a military use and not enumerated on the USML and related articles that the President determines no longer warrant control under Category VI would be controlled on the CCL under new ECCNs 8A609, 8B609, 8C609, 8D609, and 8E609.

In the July 15 proposed rule, BIS proposed creating a series of new ECCNs to control items that: (i) would be moved from the USML to the CCL or (ii) are listed on the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies Munitions List (Wassenaar Arrangement Munitions List or WAML) and are already controlled elsewhere on the CCL. The proposed rule referred to this series as the “600 series” because the third character in each of the new ECCNs would be a “6.” The first two characters of the 600 series ECCNs serve the same function as described for any other ECCN in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the Category on the CCL in which the ECCN is located. The second character is a letter in the range A through E that identifies the product group within a CCL Category. In the 600 series, the third character is the number 6. With few exceptions, the final two characters identify the WAML category that covers items that are the same or similar to items in a particular 600 series ECCN. However, in this proposed

rule, the final two characters correspond with the USML Category XX, instead of WAML Category 20.

BIS will publish additional *Federal Register* notices containing proposed amendments to the CCL that will describe proposed controls for additional categories of articles the President determines no longer warrant control under the USML. The State Department will publish, concurrently, proposed amendments to the USML that correspond to the BIS notices. BIS will also publish proposed rules to further align the CCL with the WAML and the Missile Technology Control Regime Equipment, Software and Technology Annex.

#### *Modifications to Provisions in the July 15 Proposed Rule*

In addition to the proposals mentioned above, this proposed rule would make the following modifications to the July 15 proposed rule:

- Changes to ECCN 8A018, and
- Addition of the new Category 8 (600 series) ECCNs to § 742.6(a)(1).

These modifications are described in the section “Scope of this Proposed Rule.” BIS will consider comments on the July 15 proposals only for the specific paragraph, note, and ECCNs referenced above, and only within the context of this proposed rule’s modifications to them.



**Scope of this Proposed Rule**

This proposed rule would create four new 600 series ECCNs in CCL Category 8 -- 8A620, 8B620, 8D620, and 8E620 -- that would clarify the EAR controls that apply to certain submersible vessels and related items not enumerated on the USML and also impose EAR controls on harbor entrance detection devices and related articles the President determines no longer warrant control under USML Category VI. Consistent with the regulatory construct identified in the July 15 proposed rule, this rule also would move closed and semi-closed circuit (rebreathing) apparatus, engines and propulsion systems for submersible vessels, and submarine and torpedo nets, which are currently classified under ECCN 8A018, to the new ECCN 8A620. As part of the proposed changes, ECCN 8A018, as amended, would cross-reference new ECCN 8A620 and current ECCNs that control non-military submersible vehicles, oceanographic and associated equipment. As noted in the July 15 proposed rule, moving items from 018 ECCNs to the appropriate 600 series ECCNs would consolidate the WAML and former USML items into one series of ECCNs.

The review of USML Categories VI and XX by the Departments of Defense, State and Commerce resulted in a determination by the agencies that U.S. submarines, certain submersibles, oceanographic equipment and related articles controlled on the USML provide a critical military and intelligence advantage to the United States with many technologies that are exclusively available in the United States. The exclusivity of this technology and the need to preserve the tactical and strategic superiority of the U.S. submarine force has resulted in very few exports of these USML items. In view of these factors, combined with the unique and

independent nature of U.S. submarine operations and a lesser need for interoperability with our NATO and other allies, the licensing jurisdiction for submersible vessels, oceanographic equipment and related articles currently controlled on the USML will remain largely unchanged. Furthermore, unlike other proposed rules that have been published as part of the Administration's Export Control Reform Initiative, this proposed rule would not affect the licensing jurisdiction of "parts," "components," "accessories and attachments" "specially designed" for articles that would continue to be controlled under USML Category VI or Category XX – such articles would remain controlled on the USML.

Military submersibles determined by the President to meet the criteria for movement from the USML to the CCL include Deep Submergence Rescue Vehicles (DSRV) and Deep Submergence Vehicles (DSV) and their specially designed components. This proposed rule would include these items in new ECCN 8A620. In addition, submersibles that are "specially designed" for cargo transport, but not currently enumerated on either the USML or the CCL, have been determined to warrant control on the CCL (e.g., because they are known to have been used in illegal drug trafficking activities) and would be included under new ECCN 8A620.

The proposed changes are discussed in more detail, below.

#### *New Category 8 (600 Series) ECCNs*

Harbor entrance detection devices and related articles that the President determines no longer warrant control in USML Category VI would be controlled under proposed new ECCNs 8A620,

8B620, 8D620, and 8E620. In addition, these new ECCNs would control certain submersible vessels, oceanographic equipment and related equipment that are not controlled under Category XX of the USML. With this proposed rule, BIS thus would establish a new, unilateral control on submersibles “specially designed” for cargo transport that are not currently subject to USML or CCL controls. These new ECCNs follow the 600 series construct identified in the July 15 proposed rule.

Paragraph .a of ECCN 8A620 would control submersible and semi-submersible vessels “specially designed” for a military use, but not enumerated on the USML (DSRVs and DSVs). Paragraph .b of ECCN 8A620 would control submersible and semi-submersible vessels “specially designed” for cargo transport (submersible and semi-submersible vessels of a type known to have been used in illegal drug trafficking activities) and “parts,” “components,” “accessories and attachments” “specially designed” therefor. Paragraph .c of ECCN 8A620 would control harbor entrance detection devices (magnetic, pressure, and acoustic) and controls therefor, not elsewhere specified on the USML or the CCL. Paragraph .d of ECCN 8A620 would control certain engines and propulsion devices for submersible or semi-submersible vessels. Paragraphs .e and .f would control submarine and torpedo nets and certain closed and semi-closed circuit (rebreathing) apparatus, respectively. Paragraphs .g through .w would be reserved for possible future use. Paragraph .x would control parts, components, accessories and attachments (including certain unfinished products that have reached a stage in manufacturing where they are clearly identifiable as commodities controlled by paragraph .x) that are “specially designed” for a commodity in paragraphs .a and .c through .f; however, paragraph .x would not include items “specially designed” for a defense article in USML Category VI or XX. Paragraph

.y would consist of specific types of commodities that, if “specially designed” for a commodity subject to control in ECCN 8A620, warrant less strict controls because they have little or no military significance. Commodities listed in paragraph .y would be subject to antiterrorism (AT Column 1) controls, which currently impose a license requirement for five countries. A license also would be required, in accordance with the July 15 proposed rule, if commodities listed in paragraph .y were destined to the People’s Republic of China for a military end use as described in § 744.21 of the EAR.

Unlike previous proposed rules published by BIS that are part of the Administration’s Export Control Reform Initiative, paragraphs .x and .y in new ECCN 8A620 would control only “parts,” “components,” “accessories and attachments” that are “specially designed” for a commodity enumerated in ECCN 8A620 and not specified elsewhere in the CCL. These paragraphs would not also control “parts,” “components,” “accessories and attachments” that are “specially designed” for a defense article on the USML (i.e., a defense article in Category VI or Category XX).

This proposed rule does not add gas turbine engines for submersible or semi-submersible vessels to the proposed new ECCN 8A620. Instead, the Administration issued a separate proposed rule, on December 6, 2011 (76 FR 76072), describing the U.S. Government’s controls on gas turbine engines and related items for military aircraft, ships, and vehicles that no longer warrant control under the USML or an existing 018 ECCN on the CCL. Similarly, this proposed rule does not address military surface vessels and related equipment that no longer warrant control under the USML. BIS is addressing controls on these items in a separate proposed rule that is being

published in conjunction with this proposed rule on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ECCN 8B620.a would control test, inspection, and production “equipment” and related commodities “specially designed” for the “development” or “production” of commodities enumerated in ECCN 8A620 (except for items in 8A620.b and .y) and not elsewhere on the CCL or in the USML. Paragraph .b of ECCN 8B620 would control test, inspection, and production “equipment” and related commodities “specially designed” for the “development” or “production” of commodities enumerated in ECCN 8A620.b. Paragraphs .c through .x would be reserved for possible future use. ECCN 8B620.y would control specific test, inspection, and production “equipment” “specially designed” for the “production” or “development” of commodities enumerated in ECCN 8A620 (except for items in 8A620.y) and “parts,” “components,” “accessories and attachments” “specially designed” therefor. However, unlike previous Export Control Reform Initiative proposed rules published by BIS, this proposed rule would not include in paragraph .y those items that are “specially designed” for articles on the USML. Since this proposed rule does not list specific equipment under paragraph .y, subparagraphs .y.1 through y.98 would be reserved for possible future use.

This proposed rule does not add a new ECCN 8C620 to control materials, not specified elsewhere in the CCL, that are “specially designed” for the “development” or “production” of commodities enumerated in ECCN 8A620. In this regard, BIS understands that USML subcategory XIII(f) would continue to control structural materials “specifically designed, developed, configured, modified, or adapted for defense articles,” such as warships and vessels

controlled by USML subcategory VI(a) or submersible vessels and related articles controlled by Category XX. The State Department plans to publish a proposed rule that would make USML subcategory XIII(f) a positive list of controlled structural materials.

ECCN 8D620.a would control “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities enumerated in 8A620 (except 8A620.b and .y) or 8B620 (except 8B620.b and .y). Paragraph .b of ECCN 8D620 would control “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities enumerated in 8A620.b or 8B620.b. Paragraphs .c through .x of ECCN 8D620 would be reserved for possible future use. ECCN 8D620.y would control specific “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities enumerated in ECCN 8A620.y or 8B620.y.

ECCN 8E620.a would control “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of items enumerated in ECCN 8A620 (except 8A620.y), 8B620 (except 8B620.y), or 8D620 (except 8D620.y).

Paragraph .b of 8E620 would control “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of items enumerated in ECCN 8A620.b, 8B620.b or 8D620.b. Paragraphs .c through .x of ECCN 8E620 would be reserved for possible future use. ECCN 8E620.y would control specific “technology” “specially designed” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of items enumerated in ECCN 8A620.y, 8B620.y, or 8D620.y.

In addition, ECCNs 8A620, 8B620, 8D620, and 8E620 would each contain a special paragraph designated “.y.99.” Paragraph .y.99 would control any item that meets all of following criteria: (i) the item is not listed on the CCL; (ii) the item was previously determined to be subject to the EAR in an applicable commodity jurisdiction determination issued by the U.S. Department of State; and (iii) the item would otherwise be controlled under one of these Category 8, 600 series, ECCNs because, for example, the item was “specially designed” for a military use. Items in these .y.99 paragraphs would be subject to antiterrorism (AT) controls.

This proposed rule also would affect the items currently controlled under ECCN 8A018. Specifically, engines and propulsion systems currently controlled under ECCN 8A018.b.1, .b.2, and .b.3 would be moved to new ECCN 8A620.d.1, .d.2, and .d.3, respectively. In addition, anti-submarine and anti-torpedo nets currently controlled under ECCN 8A018.b.4 would be moved to new ECCN 8A620.e and closed and semi-closed circuit (rebreathing) apparatus would be moved to new ECCN 8A620.f. In conjunction with the establishment of the new ECCN 8X620 entries, and consistent with the July 15 proposed rule’s statement that 018 entries would remain in the CCL for a time, but only for cross-reference purposes, this rule would amend ECCN 8A018 to remove all language except cross references to the new 600 series ECCNs that cover the items in the new ECCN 8A620 (i.e., ECCN 8A620.d, .e, and .f).

#### *Corresponding Amendments*

As discussed in further detail below, the July 15 proposed rule stated that one reason for control for items classified in the 600 series is regional stability (RS) (specifically, RS Column 1). Items

classified under proposed ECCN 8A620 or ECCN 8B620, other than ECCN 8A620.y or ECCN 8B620.y items, as well as related technology and software classified under ECCNs 8D620 and 8E620, would be controlled for this reason, among others. Correspondingly, this proposed rule would revise § 742.6 of the EAR to apply the RS Column 1 licensing policy to commodities classified under ECCN 8A620 and 8B620 (except paragraphs .y of those ECCNs), and to related software and technology classified under ECCNs 8D620 and 8E620. Note that the proposed rule on military aircraft and related items that BIS published on November 7 would amend the RS Column 1 licensing policy to impose a general policy of denial for “600 series” items if the destination is subject to a United States arms embargo.

#### **Relationship to the July 15 proposed rule.**

As referenced above, the purpose of the July 15 proposed rule is to establish within the EAR the framework for controlling on the CCL articles that the President determines no longer warrant control on the USML. To facilitate that goal, the July 15 proposed rule contains definitions and concepts that are meant to be applied across Categories. However, as BIS undertakes rulemakings to move specific categories of items from the USML to the CCL, if and after the President determines that such articles no longer warrant control under the USML, there may be unforeseen issues or complications that require BIS to reexamine those definitions and concepts. The comment period for the July 15 proposed rule closed on September 13, 2011. In the November 7 proposed rule, BIS proposed several changes to those definitions and concepts. The comment period for the November 7 proposed rule closed on December 22, 2011.



To the extent that this rule's proposals affect any provision in July 15 proposed rule or the July 15 proposed rule's provisions affect this proposed rule, BIS will consider comments on those provisions so long as they are within the context of the changes proposed in this rule. For example, BIS will consider comments on how the movement of Category VI and Category XX items from the USML to the CCL affects a definition, restriction, or provision that was contained in the July 15 proposed rule. BIS will also consider comments on the impact of a definition of a term in the July 15 proposed rule when that term is used in this proposed rule. BIS will not consider comments of a general nature regarding the July 15 proposed rule that are submitted in response to this rulemaking.

BIS believes that the following provisions of the July 15 proposed rule and the November 7 proposed rule on aircraft and related items are among those that could affect the items covered by this proposed rule:

- *De minimis* provisions in § 734.4;
- Restrictions on use of license exceptions in §§ 740.2, 740.10, 740.11, and 740.20;
- Change to national security licensing policy in § 742.4;
- Requirement to request authorization to use License Exception STA for end items in 600 series ECCNs and procedures for submitting such requests in §§ 740.2, 740.20, 748.8 and Supp. No. 2 to part 748;
- Addition of 600 series items to Supplement No. 2 to Part 744—List of Items Subject to the Military End-Use Requirement of § 744.21; and

- Definitions of terms in § 772.1.

BIS believes that the following provisions of this proposed rule are among those that could affect the provisions of the July 15 and November 7 proposed rules:

- Additional 600 series items identified in the RS Column licensing policy described in § 742.6.

### **Effects of this proposed rule**

BIS believes that this proposed rule would have little effect, in practical terms, on exports and reexports of the items included in new ECCNs 8A620, 8B620, 8D620, or 8E620 that the President determines no longer warrant control on the USML. Unlike the previous proposed rules published by BIS that are part of the Administration's Export Control Reform Initiative and would add 600 series ECCNs to control articles the President determines no longer warrant control under the USML, this proposed rule would affect only exports and reexports of items enumerated in ECCN 8A620, "specially designed" "parts," "components," "accessories and attachments" therefor (as indicated in ECCN 8A620.x or .y), and related items described in ECCN 8B620, 8D620, or 8E620. This rule would not affect the licensing jurisdiction for "parts," "components," "accessories and attachments" "specially designed" for articles that would continue to be controlled under USML Category VI or Category XX – such articles would remain controlled on the USML. Furthermore, based the licensing history for the items affected

by this rule, BIS anticipates receiving an average of less than one license application per year for each type of item (e.g., the items described in ECCN 8A620, including those that currently are controlled under ECCN 8A018).

In terms of specific EAR requirements, this rule would make additional items eligible for *de minimis* consideration under the EAR (i.e., “specially designed” “parts,” “components,” “accessories and attachments” for items enumerated in ECCN 8A620.a, .b, or .c, as indicated in ECCN 8A620.x or .y – *de minimis* consideration currently is available for the ECCN 8A018 items that would be moved to ECCN 8A620.d, .e, or .f). However, items “specially designed” for articles that would continue to be controlled under USML Category VI or Category XX also would remain controlled on the USML. In addition, there will be greater flexibility for certain 600 series ECCN items (i.e., items enumerated in ECCN 8A620.a, .b, or .c) with respect to the availability of certain license exceptions, such as License Exceptions GOV and STA. Some of these specific effects are discussed in more detail below. The actual impact of these changes is likely to be negligible in light of the fact that BIS anticipates receiving only a limited number of license applications for such items.

#### *De minimis.*

The July 15 proposed rule would impose certain unique *de minimis* requirements on items controlled under the new 600 series ECCNs. Section 734.3 of the EAR provides, *inter alia*, that under certain conditions items made outside the United States that incorporate items subject to the EAR are not subject to the EAR if they do not exceed a “*de minimis*” percentage of

controlled U.S. origin content. Depending on the destination, the *de minimis* percentage can be either 10 percent or 25 percent. If the July 15 proposed rule's amendments at § 734.4 of the EAR are adopted, the new ECCNs 8A620, 8B620, 8D620 and 8E620 proposed in this rule would be subject to the *de minimis* provisions set forth in the July 15 proposed rule, because they would be "600 series" ECCNs. Foreign-made items incorporating items in the new ECCNs would become eligible for *de minimis* treatment at the 10 percent level (i.e., a foreign-made item is not subject to the EAR, for *de minimis* purposes, if the value of its U.S.-origin controlled content does not exceed 10 percent of foreign-made item's value). In contrast, the AECA does not permit the ITAR to have a *de minimis* treatment for USML-listed items, regardless of the significance or insignificance of the U.S.-origin content or the percentage of U.S.-origin content in the foreign-made item (i.e., USML-listed items remain subject to the ITAR when they are incorporated abroad into a foreign-made item, regardless of either of these factors). In addition, foreign-made items that incorporate any items that are currently classified under an 018 ECCN and that are moved to a new 600 series ECCN would be subject to the EAR if those foreign-made items contained more than 10 percent U.S.-origin controlled content, regardless of the destination and regardless of the proportion of the U.S.-origin controlled content accounted for by the former 018 ECCN items.

*Use of license exceptions.*

The July 15 proposed rule would impose certain restrictions on the use of license exceptions for items that would be controlled under the new 600 series ECCNs on the CCL. For example, proposed § 740.2(a)(12) would make 600 series items that are destined for a country subject to a

United States arms embargo ineligible for shipment under a license exception, except where authorized by License Exception GOV under § 740.11(b)(2)(ii) of the EAR. BIS believes that, even with the July 15 and November 7 proposed restrictions on the use of license exceptions for 600 series items, the restrictions on those items currently on the USML would be reduced, particularly with respect to exports to NATO members and multiple-regime member countries, if those items are moved from the USML to proposed ECCN 8A620. BIS also believes that, in practice, the movement of items from an 018 ECCN to a new 600 series ECCN (e.g., engines and propulsion systems for submersible vessels from 8A018.b.1, b.2, and .b.3 to 8A620.d.1, .d.2, and .d.3, respectively, submarine and torpedo nets from 8A018.b.4 to 8A620.e, and closed and semi-closed circuit (rebreathing) apparatus from 8A018.a to 8A620.f) would have little effect on license exception availability for those items. However, BIS is aware of two situations (the use of License Exceptions GOV and STA) in which movement of items from an 018 ECCN to a new 600 series ECCN could, in practice, impose greater limits on the use of license exceptions than currently is the case.

First, the July 15 proposed rule would limit the use of License Exception GOV for 600 series commodities to situations in which the United States Government is the consignee and end user or to situations in which the consignee or end user is the government of a country listed in §740.20(c)(1). Currently, closed and semi-closed circuit (rebreathing) apparatus classified under ECCN 8A018.a, engines and propulsion systems classified under 8A018.b.1, b.2, or .b.3 and submarine and torpedo nets classified under ECCN 8A018.b.4, may be exported under any provision of License Exception GOV to any destination authorized by that provision if all of the conditions of that provision are met and nothing else in the EAR precludes such shipment.

Second, the July 15 proposed rule would: (i) limit the use of License Exception STA for “end items” in 600 series ECCNs to those end items for which a specific request for License Exception STA eligibility (filed in conjunction with a license application) has been approved and (ii) require that the end item be for ultimate end use by a foreign government agency of a type specified in the July 15 proposed rule. The July 15 proposed rule also would limit exports of 600 series parts, components, accessories, and attachments under License Exception STA for ultimate end use by the same set of end users. Neither restriction currently applies to the use of License Exception STA for commodities classified under ECCN 8A018.a or .b, but both would apply to closed and semi-closed circuit (rebreathing) apparatus currently controlled under 8A018.a and submarine and torpedo nets currently controlled under ECCN 8A018.b.4. In addition, the July 15 proposed rule would limit the shipment of 600 series items under License Exception STA to destinations listed in § 740.20(c)(1). Currently, the commodities classified under ECCN 8A018.a or .b (which would be moved to ECCN 8A620 by this proposed rule) may be shipped under License Exception STA to destinations listed in § 740.20(c)(1) or (c)(2).

*Making U.S. Export Controls More Consistent with the Wassenaar Arrangement Munitions List Controls*

The Administration has stated, since the beginning of the Export Control Reform Initiative, that the reforms will be consistent with the obligations of the United States to the multilateral export control regimes. Accordingly, the Administration will, in this and subsequent proposed rules, exercise its national discretion to implement, clarify, and, to the extent feasible, align its controls

with those of the regimes. For example, the proposed ECCN 8A620 tracks, to the extent possible, the numbering structure and text of WAML category 9 pertaining to submersible vessels not subject to the ITAR. It also implements in 8A620.x the controls in WAML category 16 for forgings, castings, and other unfinished products; in 8B620.a the controls in WAML category 18 for production equipment; in 8D620 the applicable controls in WAML category 21 for software; and in 8E620 the applicable controls in WAML category 22 for technology.

*Other effects.*

Pursuant to the framework identified in the July 15 proposed rule, commodities classified under ECCN 8A620 (other than ECCN 8A620.b and .y), along with related test inspection and production equipment, software, and technology classified under ECCN 8B620, 8D620 or 8E620 (except items classified under the .b and .y paragraphs of these ECCNs), would be subject to the licensing policies that apply to items controlled for national security (NS) reasons, as described in § 742.4(b)(1) – specifically, NS Column 1 controls. In addition, all commodities in ECCN 8A620 (other than those identified in 8A620.y, which are controlled for AT Column 1 anti-terrorism reasons only and may also be subject to the prohibitions described in Part 744), along with related test, inspection and production equipment, software and technology classified under ECCN 8B620, 8D620 or 8E620 (except items classified under the .y paragraphs of these ECCNs), would be subject to the regional stability licensing policies set forth in § 742.6(a)(1) – specifically, RS Column 1.

The July 15 proposed rule would change § 742.4 to apply a general policy of denial to 600 series items for destinations that are subject to a United States arms embargo. That policy would apply to all items controlled for national security (NS) reasons under this proposed rule. The November 7 proposed rule would expand that general policy of denial to include 600 series items subject to the licensing policies that apply to items controlled for regional stability reasons, as described in § 742.6(b)(1) – specifically, RS Column 1. While this change might seem redundant for the items affected by this proposed rule, it ensures that a general denial policy would apply to any 600 series items that are controlled for missile technology (MT) and regional stability (RS) reasons, but not for national security (NS) reasons (as would be the case for certain items affected by the aircraft rule).

*Jurisdictional and Classification Status of Items Subject to Previous Commodity Jurisdiction Determinations*

The Administration recognizes that some items that would fall within the scope of the proposed new ECCNs will have been subject to commodity jurisdiction (CJ) determinations issued by the United States Department of State. The State Department will have either determined that the item was subject to the jurisdiction of the ITAR or that it was not. (See 22 CFR §§ 120.3 and 120.4.) Under this proposed rule, items that the State Department determined to be not subject to the ITAR and that are not described on the CCL would be subject to the AT-only controls of the “.y.99” paragraph of a 600 series ECCN if they would otherwise be within the scope of the ECCN. Thus, for example, ECCN 8A620.x would control any part, component, accessory, or attachment “specially designed” for a commodity enumerated in ECCN 8A620 that is not



specified elsewhere on the CCL (in this regard, note that 8A620.x would not control items “specially designed” for an article identified on the USML). However, any part, component, accessory or attachment that is determined by CJ not to be subject to the ITAR and is (as defined) “specially designed” for a submersible or semi-submersible vessel or other commodity controlled by ECCN 8A620 would be controlled under 8A620.y.99 if it is not identified elsewhere on the CCL. If the item is controlled, either as a matter of law or as the result of a subsequent commodity classification (“CCATS”) determination by Commerce, under an ECCN that is currently on the CCL (e.g., ECCN 8A992.f), that ECCN would continue to apply to the item. This general approach will, pending public comment, be repeated in subsequent proposed rules pertaining to other categories of items.

If, however, the State Department had made a CJ determination that a particular item was subject to the jurisdiction of ITAR but that item is not described on the final, implemented version of a revised USML category, a new CJ determination would not be required unless there is doubt about the application of the new USML category to the item. (See 22 CFR § 120.4.) Thus, unless there are doubts about the jurisdictional status of a particular item, exporters and reexporters would be entitled to rely on the revised USML categories when making jurisdictional determinations, notwithstanding past CJ determinations that, under the previous version of the USML, the item was ITAR controlled.

Finally, if the State Department had made a CJ determination that a particular item was subject to the jurisdiction of the ITAR and that item remains in the revised USML, the item would remain subject to the jurisdiction of the ITAR.

**Section-by-section description of the proposed changes.**

- Section 742.6 – ECCNs 8A620, 8B620, 8D620 and 8E620 are added to § 742.6(a)(1) to impose an RS Column 1 license requirement and licensing policy, including a general policy of denial in Section 742.6(b)(1) for applications to export or reexport “600 series” items to destinations that are subject to a United States arms embargo.
- Supplement No. 1 to part 774 –ECCNs 8A620, 8B620, 8D620 and 8E620 would be added to Supplement No. 1 to part 774. ECCN 8A018 would be amended to remove all language except cross references to engines and propulsion systems for submersible vessels, submarine and torpedo nets, and closed and semi-closed circuit (rebreathing) apparatus that would be moved from ECCN 8A018 to proposed new ECCN 8A620 under paragraphs .d, .e, and .f, respectively.

**Request for Comments**

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. All comments (including any personally identifying information or information for which a claim of confidentiality is asserted either in those comments or their transmittal e-mails) will be made available for public inspection and copying. Parties who wish to comment

anonymously may do so by submitting their comments via Regulations.gov, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

### **Regulatory Requirements.**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect two approved collections: Simplified Network Application Processing + System (control number 0694-0088), which includes, among other things, license applications, and License Exceptions and Exclusions (0694-0137).

As stated in the proposed rules published at 76 FR 41958 (July 15, 2011), 76 FR 41958 (July 15, 2011), 76 FR 68675 (November 7, 2011), 76 FR 76072 (December 6, 2011), and 76 FR 76085 (December 6, 2011) and in the proposed rule on military surface vessels and related equipment that is being published in conjunction with this proposed rule on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], BIS believes that the combined effect of all rules to be published adding items to EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the number of license applications to be submitted by approximately 16,000 annually, resulting in an increase in burden hours of 5,067 (16,000 transactions at 17 minutes each) under control number 0694-0088.

Some items formerly on the USML would become eligible for License Exception STA under this rule. Other such items may become eligible for License Exception STA upon approval of a request submitted in conjunction with a license application. As stated in the July 15 and November 7 proposed rules published by BIS, in the two proposed rules that BIS published on December 6, and in the proposed rule on military surface vessels and related equipment that BIS

is publishing in conjunction with this proposed rule on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published adding items to EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions @ 1 hour and 10 minutes each).

BIS does not expect that these changes would result in a measurable increase in burden with respect to the items affected by this proposed rule (i.e., the items that would be moved from the 018 ECCNs to the new 600 series ECCNs and the items that would be included in the new 600 series ECCNs because the President determines such items no longer warrant control under the USML). The reason for this is that the export and reexport trade in the items that would be controlled under new ECCN 8A620, 8B620, 8D620, or 8E620 is very limited. In fact, BIS anticipates receiving an average of less than one license application per year for each type of item controlled under these ECCNs.

Similarly, BIS does not expect that the addition to new ECCNs 8A620, 8B620, 8D620, and 8E620 of items that the President determines no longer warrant control under the USML would result in a measurable decrease in burden, given the very limited volume of export and reexport trade in such items. Furthermore, unlike the previous proposed rules published by BIS that are part of the Administration's Export Control Reform Initiative, this proposed rule would reduce burden hours only with respect to exports and reexports of certain items enumerated in ECCN 8A620 (specifically ECCN 8A620.a, .b, and .c), "specially designed" "parts," "components,"

“accessories and attachments” therefore (as indicated in ECCN 8A620.x or .y), and related items described in ECCN 8B620, 8D620, or 8E620. This proposed rule would not affect the licensing jurisdiction for “parts,” “components,” “accessories and attachments” “specially designed” for articles that would continue to be controlled under USML Category VI or Category XX – such articles would remain controlled on the USML. Therefore, the reduction in burden hours that would result from this proposed rule would be significantly less than in the previous Export Control Reform Initiative proposed rules published by BIS.

In conclusion, due to the very limited volume of export and reexport trade in the items that would be affected by this proposed rule, BIS does not expect the proposed amendments described therein to result in a measurable change in burden.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis.

Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis. A summary of the factual basis for the certification is provided below.

*Number of Small Entities.*

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

*Economic Impact*

This proposed rule is part of the Administration's Export Control Reform Initiative. Under that initiative, the United States Munitions List (22 CFR part 121) (USML) would be revised to be a "positive" list, *i.e.*, a list that does not use generic, catch-all controls on any part, component, accessory, attachment, or end item that was in any way specifically modified for a defense article, regardless of the article's military or intelligence significance or non-military applications. At the same time, articles that are determined to no longer warrant control on the USML would become controlled on the Commerce Control List (CCL). Such items, along with certain military items that currently are on the CCL, will be identified in specific Export Control

Classification Numbers (ECCNs) known as the “600 series” ECCNs. In addition, some items currently on the Commerce Control List would move from existing ECCNs to the new 600 series ECCNs.

This rule addresses certain submersible and semi-submersible vessels currently enumerated in USML Category XX (i.e., Deep Submergence Rescue Vehicles (DSRV) and Deep Submergence Vehicles (DSV)), certain submersible and semi-submersible vessels “specially designed” for cargo transport (i.e., vessels not currently enumerated on either the USML or the CCL, but determined to warrant control on the CCL, because they are known to have been used in illegal drug trafficking activities), items currently controlled under ECCN 8A018 (i.e., closed and semi-closed circuit (rebreathing) apparatus, engines and propulsion systems for submersible and semi-submersible vessels, and submarine and torpedo nets), and certain articles currently enumerated in USML Category VI (i.e., harbor entrance detection devices and related articles).

BIS does not anticipate that the changes described in this proposed rule would have a measurable impact on small entities. This is because the export and reexport trade in the items that would be controlled under new ECCN 8A620, 8B620, 8D620, or 8E620 is very limited. In addition, this proposed rule would not affect the licensing jurisdiction for “parts,” “components,” “accessories and attachments” “specially designed” for articles that would continue to be controlled under USML Category VI or Category XX. In contrast to the other proposed rules that BIS has published as part of the Administration’s Export Control Reform Initiative, such articles would remain controlled on the USML. In fact, based on the licensing history of the items that would



be affected by this proposed rule, BIS anticipates receiving an average of less than one license application per year for each type of item controlled under these new 600 series ECCNs.

Although BIS anticipates that the changes that would be made by this proposed rule would not have a measurable impact on the burden on small entities, changing the jurisdictional status of certain Category VI and Category XX articles would, potentially, reduce the burden on small entities (and other entities as well) through: (i) elimination of some license requirements, (ii) greater availability of license exceptions, (iii) simpler license application procedures, and (iv) reduced, or eliminated, registration fees.

For example, parts and components identified in ECCN 8A620.y would be designated immediately as parts and components that, even if specially designed for a military use, have little or no military significance (in this regard, note that ECCN 8A620.y would control only parts or components “specially designed” for items that would be controlled by ECCN 8A620.a through .f – not parts and components “specially designed” for articles enumerated on the USML). Those parts and components identified in proposed ECCN 8A620.y that currently require a license under the ITAR to nearly all destinations would, under the EAR, require a license to only five destinations and, if destined for a military end use, to the People’s Republic of China.

Certain exports and reexports of the Category VI and Category XX articles that would be placed on the CCL by this rule would become eligible for license exceptions that apply to shipments to United States Government agencies, shipments valued at less than \$1,500, parts and components

being exported for use as replacement parts, temporary exports, and License Exception Strategic Trade Authorization (STA), reducing the number of licenses that exporters of these items would need. Under License Exception STA, the exporter would need to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply with the EAR and other applicable U.S. laws. Because such statements and obligations can apply to an unlimited number of transactions and have no expiration date, they would impose a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

Even for exports and reexports for which a license would be required, the process would be simpler and less costly under the EAR. When a USML Category VI or Category XX article is moved to the CCL, the number of destinations for which a license is required would remain unchanged. However, the burden on the license applicant would decrease because the licensing procedure for CCL items is simpler and more flexible than the license procedure for USML articles.

Under the USML licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the applicant has a way of determining whether the U.S. Government will authorize the transaction before it enters into potentially lengthy, complex and expensive sales presentations or contract negotiations. Under the USML procedure, the applicant must caveat all sales presentations with a reference to the

need for government approval and is more likely to engage in substantial effort and expense only to find that the government will reject the application. Second, a CCL license applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a specified consignee over the life of a license (normally two years, but may be longer if circumstances warrant a longer period), thus reducing the total number of licenses for which the applicant must apply.

For items currently on the CCL that would be moved from existing ECCNs to the new 600 series ECCNs (i.e., the items currently controlled under ECCN 8A018), license exception availability would be narrowed somewhat and the applicable *de minimis* threshold for foreign-made products containing those items would in some cases be reduced from 25 percent to 10 percent. However, similar to the changes affecting the USML Category VI and Category XX articles described above, BIS anticipates that these changes would have little impact on the burden on small entities in light of the extremely limited number of exports and reexports involving the items currently controlled under ECCN 8A018.

### *Conclusion*

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS anticipates that none of the changes proposed by this rule would likely have a measurable impact on the burden on small entities, due to the limited number of exports and reexports involving the items that would be affected by this proposed rule. However, although BIS anticipates that the changes that would be made by this

proposed rule would not have a measurable impact on the burden on small entities, changing the jurisdictional status of certain Category VI and Category XX articles would, potentially, reduce the burden on small entities by reducing the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, simpler export license applications, reduced or eliminated registration fees and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin parts and components, which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. For these reasons, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

## **List of Subjects**

### *15 CFR Part 742*

Exports, Terrorism

### *15 CFR Part 774*

Exports, Reporting and recordkeeping requirements

For the reasons stated in the preamble, parts 742 and 774 of the Export Administration Regulations (15 CFR parts 730-774) are proposed to be amended as follows:

**15 CFR PART 742 – [AMENDED]**

1. The authority citation for 15 CFR part 742 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec 1503, Pub. L. 108-11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003-23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

2. Section 742.6 is amended by revising paragraph (a)(1) to read as follows:

**§ 742.6 Regional stability.**

(a) \* \* \*

(1) *RS Column 1 License Requirements in General.* As indicated in the CCL and in RS column 1 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 0A521; 0A606 (except 0A606.b and .y); 0B521; 0B606 (except 0B606.y); 0C521; 0C606 (except 0C606.y); 0D521; 0D606 (except 0D606.y); 0E521; 0E606 (except 0E606.y); 6A002.a.1, a.2, a.3, .c, or .e; 6A003.b.3, and b.4.a; 6A008.j.1; 6A998.b; 6D001 (only “software” for the “development” or “production” of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D002 (only “software” for the “use” of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D003.c; 6D991 (only “software” for the “development,” “production,” or “use” of equipment classified under 6A002.e or 6A998.b); 6E001 (only “technology” for “development” of items in 6A002.a.1, a.2, a.3 (except 6A002.a.3.d.2.a and 6A002.a.3.e for lead selenide focal plane arrays), and .c or .e, 6A003.b.3 and b.4, or 6A008.j.1); 6E002 (only “technology” for “production” of items in 6A002.a.1, a.2, a.3, .c, or .e, 6A003.b.3 or b.4, or 6A008.j.1); 6E991 (only “technology” for the “development,” “production,” or “use” of equipment classified under 6A998.b); 6D994; 7A994 (only QRS11-00100-100/101 and QRS11-0050-443/569 Micromachined Angular Rate Sensors); 7D001 (only “software” for “development” or “production” of items in 7A001, 7A002, or 7A003); 7E001 (only “technology” for the “development” of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E002 (only “technology” for the “production” of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E101 (only “technology” for the “use” of inertial navigation systems, inertial equipment, and specially designed components for civil aircraft); 8A609 (except 8A609.y); 8A620 (except 8A620.y); 8B609 (except 8B609.y); 8B620 (except

8B620.y); 8C609 (except 8C609.y); 8D609 (except software for the “development,” “production,” operation, or maintenance of commodities controlled by 8A609.y, 8B609.y, or 8C609.y); 8D620 (except software for the “development,” “production,” operation, or maintenance of commodities controlled by 8A620.y or 8B620.y); 8E609 (except “technology” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by 8A609.y, 8B609.y, or 8C609.y); 8E620 (except “technology” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by 8A620.y or 8B620.y); 9A610 (except 9A610.y); 9A619 (except 9A619.y); 9B610 (except 9B610.y); 9B619 ( except 9B619.y); 9C610 (except 9C610.y); 9C619 (except 9C619.y); 9D610 (except software for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of commodities controlled by 9A610.y, 9B610.y, or 9C610.y); 9D619 (except software for the “development,” “production,” operation, or maintenance of commodities controlled by 9A619.y, 9B619.y, or 9C619.y); 9E610 (except “technology” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A610.y, 9B610.y, or 9C610.y); and 9E619 (except “technology” for the “development,” “production” operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y).

\* \* \* \* \*

**PART 774 - [AMENDED]**

3. The authority citation for 15 CFR part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8--Marine, ECCN 8A018 is revised to read as follows:

**Supplement No. 1 to Part 774 – the Commerce Control List**

\* \* \* \* \*

**8A018 Items on the Wassenaar Arrangement Munitions List.**

No items currently are in this ECCN. See ECCN 8A620 for engines and propulsion systems for submersible vessels, submarine and torpedo nets, closed and semi-closed circuit (rebreathing) apparatus, and specially designed components therefor that, immediately prior to **[Insert effective date of final rule that moves these items]**, were classified under ECCN 8A018. See ECCNs 8A001, 8A002 and 8A992 for controls on non-military submersible vehicles, oceanographic and associated equipment.



5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8--Marine, add a new ECCN 8A620 between ECCNs 8A018 and 8A992 to read as follows:

**8A620 Submersible vessels, oceanographic and associated equipment.**

**License Requirements**

*Reason for Control:* NS, RS, AT

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry except 8A620.b and .y	NS Column 1
RS applies to entire entry except 8A620.y	RS Column 1
AT applies to entire entry	AT Column 1

**License Exceptions**

*LVS:* \$1,500

*GBS:* N/A

*CIV:* N/A

*STA*: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 8A620. Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may not be used for any “end item” in 8A620, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for “600 series” end items). See § 740.20(g) for the procedures to follow if you wish to request new STA eligibility for “end items” under this ECCN 8A620 as part of an export, reexport, or transfer (in-country) license application. “End items” under this entry that have already been determined to be eligible for License Exception STA are listed in Supplement No. 4 to part 774 and on the BIS website at [www.bis.doc.gov](http://www.bis.doc.gov). Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 8A620.x without the need for a determination described in § 740.20(g).

### **List of Items Controlled**

*Unit*: Equipment in number; parts, components, accessories and attachments in \$ value

*Related Controls*: (1) Submersible vessels, oceanographic and associated equipment, and technical data (including software), and services directly related thereto, described in 22 CFR part 121, Category XX, Submersible Vessels, Oceanographic and Associated Equipment, are subject to the jurisdiction of the International Traffic in Arms Regulations (ITAR). Parts, components, accessories, and attachments “specially designed” for defense articles in USML Category XX are controlled under USML sub-category XX(c). (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items. (3) For controls on non-military submersible vehicles, oceanographic and associated equipment, see ECCNs 8A001, 8A002, and 8A992.

*Related Definitions:* N/A

*Items:*

a. Submersible and semi-submersible vessels “specially designed” for a military use and not enumerated in the USML.

**Note:** 8A620.a includes Deep Submergence Rescue Vehicles (DSRV) and Deep Submergence Vehicles (DSV).

b. Submersible and semi-submersible vessels “specially designed” for cargo transport and “parts,” “components,” “accessories and attachments” “specially designed” therefor.

c. Harbor entrance detection devices (magnetic, pressure, and acoustic) and controls therefor, not elsewhere specified on the USML or the CCL.

d. Engines and propulsion systems, as follows:

d.1. Diesel engines of 1,500 hp and over with rotary speed of 700 rpm or over “specially designed” for submarines;

d.2. Electric motors “specially designed” for submarines and having all of the following:

d.2.a. Power output of more than 1,000 hp;

d.2.b. Quick reversing;

d.2.c. Liquid cooled; and

d.2.d. Totally enclosed.

d.3. Non-magnetic diesel engines with a power output of 50 hp or more and either of the following:

d.3.a. Non-magnetic content exceeding 25% of total weight; or

d.3.b. Non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines.

**Note:** Other propulsion systems not specified in ECCN 8A620.d or elsewhere on the CCL (see Related Controls paragraph for this ECCN) and “specially designed” for an article controlled by USML Category XX are controlled by USML XX(b) or (c).

e. Submarine nets and torpedo nets.

f. Closed and semi-closed circuit (rebreathing) apparatus specially designed for military use and not enumerated elsewhere in the CCL or in the USML, and specially designed components for use in the conversion of open-circuit apparatus to military use.

g. through w. [RESERVED]

x. “Parts,” “components,” “accessories and attachments” that are “specially designed” for a commodity enumerated in ECCN 8A620 (except for 8A620.b) and not specified elsewhere in the CCL.

**Note 1:** Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 8A620.x are controlled by ECCN 8A620.x.

**Note 2:** “Parts,” “components,” “accessories and attachments” specified in ECCN 8A620.y are subject to the controls of that paragraph.

y. Specific “parts,” “components,” “accessories and attachments” “specially designed” for a commodity subject to control in this ECCN and not elsewhere specified in the CCL, as follows:

y.1. Ship service hydraulic and pneumatic systems;

y.2. Internal communications systems;

- y.3. Filters and filter assemblies for hydraulic, oil and fuel systems;
- y.4. Galleys and related equipment;
- y.5. Hydraulic and fuel hoses, straight and unbent lines, fittings, clips, couplings, and brackets;
- y.6. Lavatories and sanitary systems;
- y.7. Magnetic compass, magnetic azimuth detector;
- y.8. Medical facilities and related equipment;
- y.9. Potable water storage systems;
- y.10. Filtered and unfiltered panel knobs, indicators, switches, buttons, and dials;
- y.11. Emergency lighting;
- y.12. Analog gauges and indicators;
- y.13. Audio selector panels;
- y.14. Atmosphere control and monitoring equipment;
- y.15. Environmental control and monitoring equipment;
- y.16. Trash handling systems;
- y.17. Mooring, towing and dry docking equipment;
- y.18. Anchoring systems;
- y.19. Material corrosion and fouling control systems;
- y.20. Damage control equipment.
- y.21. to y.98 [RESERVED]

y.99. Commodities not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8A620.

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8--Marine, add a new ECCN 8B620 immediately following ECCN 8B001 to read as follows:

**8B620 Test, inspection, and production “equipment” and related commodities “specially designed” for the “development” or “production” of commodities enumerated in ECCN 8A620.**

### **License Requirements**

*Reason for Control:* NS, RS, AT

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry except 8B620.b and .y	NS Column 1
RS applies to entire entry except 8B620.y	RS Column 1

AT applies to entire entry	AT Column 1
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### **License Exceptions**

*LVS:* \$1,500

*GBS:* N/A

*CIV:* N/A

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 8B620.

### **List of Items Controlled**

*Unit:* N/A

*Related Controls:* N/A

*Related Definitions:* N/A

*Items:*



a. Test, inspection, and production “equipment” “specially designed” for the “production” or “development” of commodities enumerated in ECCN 8A620 (except for 8A620.b and .y) and “parts,” “components,” “accessories and attachments” “specially designed” therefor.

b. Test, inspection, and production “equipment” “specially designed” for the “production” or “development” of commodities enumerated in ECCN 8A620.b and “parts,” “components,” “accessories and attachments” “specially designed” therefor.

c. through x. [RESERVED]

y. Specific test, inspection, and production “equipment” “specially designed” for the “production” or “development” of commodities enumerated in ECCN 8A620 (except for 8A620.y) and “parts,” “components,” “accessories and attachments” “specially designed” therefor, as follows:

y.1. through y.98 [RESERVED]

y.99. Commodities not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8B620.

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8--Marine, add a new ECCN 8D620 between ECCN 8D002 and 8D992 to read as follows:

**8D620** Software “specially designed” for the “development,” “production,” operation or maintenance of submersible vessels, oceanographic and associated equipment controlled by **8A620** or equipment controlled by **8B620**.

### **License Requirements**

*Reason for Control:* NS, RS, AT

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry except 8D620.b and .y	NS Column 1
RS applies to entire entry except 8D620.y	RS Column 1
AT applies to entire entry	AT Column 1

### **License Exceptions**

*CIV:* N/A

*TSR:* N/A

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used

for any software in 8D620.

### **List of Items Controlled**

*Unit:* \$ value

*Related Controls:* (1) Software directly related to articles enumerated in USML Category XX is controlled under USML Category XX(d). (2) See ECCN 0A919 for foreign made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items.

*Related Definitions:* N/A

*Items:*

a. “Software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by ECCN 8A620 or ECCN 8B620 (except for ECCN 8A620.b and .y or 8B620.b and .y).

b. “Software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by ECCN 8A620.b or ECCN 8B620.b.

c. to x. [RESERVED]

y. Specific “software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities enumerated in ECCN 8A620.y or 8B620.y, as follows:

y.1. through y.98 [RESERVED] ]

y.99. Software not identified on the CCL that (i) has been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8D620.

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8--Marine, add a new ECCN 8E620 between ECCN 8E002 and 8E992 to read as follows:

**8E620 “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of submersible vessels, oceanographic and associated equipment controlled by 8A620, equipment controlled by 8B620, or software controlled by 8D620.**

#### **License Requirements**

*Reason for Control:* NS, RS, AT

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry except 8E620.b and .y	NS Column 1
RS applies to entire entry except 8E620.y	RS Column 1
AT applies to entire entry	AT Column 1

### **License Exceptions**

*CIV:* N/A

*TSR:* N/A

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any technology in 8E620.

### **List of Items Controlled**

*Unit:* N/A

*Related Controls:* (1) Technical data directly related to articles enumerated in USML Category XX are controlled under USML Category XX(d). (2) See ECCN 0A919 for foreign

made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items.

*Related Definitions:* N/A

*Items:*

a. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 8A620 or 8B620 or “software” controlled by ECCN 8D620, except for ECCN 8A620.b and .y, 8B620.b and .y, or 8D620.b and .y.

b. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 8A620.b or 8B620.b or “software” controlled by ECCN 8D620.b.

c. through x. [RESERVED]

y. Specific “technology” “specially designed” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 8A620.y or 8B620.y or “software” controlled by ECCN 8D620.y, as follows:

y.1. through y.98 [RESERVED]

y.99. “Technology” not identified on the CCL that (i) has been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8E620.

DATED: December 16, 2011

Kevin J. Wolf

Assistant Secretary

for Export Administration

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